



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 293-00

9 June 2000

DI [REDACTED] SNR

[REDACTED]

JA [REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

You requested removal of the enlisted performance evaluation report for 16 November 1998 to 15 November 1999 and the service record page 13 ("Administrative Remarks") entry dated 1 December 1999. It is noted that the only version of the performance evaluation report on file in your official record is the one that marks you "3.0" in block 35.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 8 June 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Navy Personnel Command dated 24 April 2000, a copy of which is attached. They also considered your rebuttal letter dated 30 May 2000 with enclosures.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board was unable to find that the items you cite as omissions from the contested performance evaluation report should have been included. They agreed with you that Naval Military Personnel Manual (MILPERSMAN) 1910-144, entitled "Separation by Reason of Misconduct - Civilian Conviction," does not expressly address performance evaluation reports or page 13 entries. However, they found that it does reflect the Navy's position that a case, such as yours, where adjudication of guilt is withheld does entail an action "tantamount to" a finding of guilty. Therefore, they found that your contested report did not violate Bureau of Naval Personnel Instruction 1610.10, enclosure (2), paragraph N-13b by

mentioning your civil action, even though there was no finding of guilty. Likewise, they found that your contested page 13 entry did not violate MILPERSMAN 1070-320 by documenting your civil action which did not involve a finding of guilty.

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1610
PERS-311
24 April 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: DV [REDACTED] SN [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his performance evaluation for the period 16 November 1998 to 15 November 1999.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record did not reveal the performance evaluation in question to be on file. The report has been received and we are having it processed and placed in the member's digitized record. It is signed by the member acknowledging the contents of the report and his right to submit a statement. The member indicated he did desire to submit a statement. The member's statement is not on file; however, the member provided a copy with his petition with the reporting senior's endorsement.

b. The member also provided another report for the same period in question. This report appears to be the original and the report being processed is a supplemental report. The supplemental report changed block-35 from 2.0 to 3.0. The member's promotion recommendation is the same on both reports. Due to the reporting senior's timely action in submitting the revised report, we will retain it vice the original report.

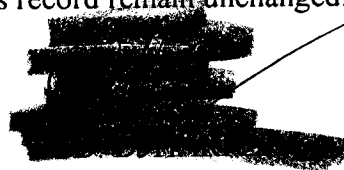
c. Petty [REDACTED] is that the performance trait grade in blocks-35, 36, and 45-promotion recommendation were marked down, and adverse comments were made due to a no-contest plea in a civilian court. The performance evaluation does not state the member was convicted or found guilty, only the statement "his superb performance was marred by a civil incident". The comment the reporting senior made appears to be appropriate. The report is procedurally correct.

d. Per reference (a), Annex N, paragraph N-13, comments of events which may have effected the command or member's performance, and which are established to the reporting senior's satisfaction are appropriate if desired by the reporting senior. The contents of the report (marks,

comments and recommendation) represent the reporting senior's appraisal authority for a specific period of time. The report is not required to be consistent with previous or subsequent reports.

e. The member does not prove the report to be unjust or in error.

3. We recommend the member's record remain unchanged.

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Head, Performance
Evaluation Branch